

DOCKET SECTION

PRESIDING OFFICER'S
RULING NO. R97-1/72

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

Postal Rate and Fee Changes

Docket No. R97-1

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PRESIDING OFFICER'S RULING GRANTING IN PART MOTION TO COMPEL RESPONSES FROM POSTAL SERVICE WITNESS CRUM

(November 25, 1997)

A Nashua Photo Inc., District Photo Inc., Mystic Color Lab, and Seattle Filmworks, Inc. Motion to Compel Response of United States Postal Service Witness Charles L. Crum to NDMS Interrogatories and Motion to Shorten Response Time (Motion) was filed November 18, 1997. In accordance with Presiding Officer's Ruling R97-1/64, the Postal Service responded on November 21, 1997.

The Motion seeks to compel responses to discovery requests NDMS/USPS-T28-27-41. These questions purport to be inquiries stemming from library reference H-108, subsequently sponsored as Exhibit K to witness Crum's testimony. The Motion relies on Order Nos. 1200 and 1201 as establishing that discovery and oral cross-examination would be allowed on this and other Postal Service evidence initially submitted as library references.

The Postal Service contends that there has already been ample opportunity for discovery and cross-examination concerning witness Crum's Exhibit K, and that there is no reason to allow Nashua/District/Mystic/Seattle (NDMS) further questions on this subject. Response to NDMS Motion to Compel Response to Interrogatories NDMS/USPS-T28-27-41 (Response) at 2-3. Postal Service argues that any failure by NDMS to thoroughly explore this topic is a result of NDMS's litigation strategy.

Notwithstanding this objection, the Postal Service undertakes to respond to some of the NDMS interrogatories on an expedited schedule and suggests that there should be no need for further cross-examination of witness Crum concerning his Exhibit K.¹ In addition to these general arguments, the Service has additional objections applicable to certain specific interrogatories. It contends several questions were already asked and answered, several are beyond the scope of Crum's Exhibit K, and others are unclear and require clarification.

Commission Order No. 1200 and my statements during earlier hearings left NDMS with the reasonable expectation that additional cross-examination on Crum Exhibit K (and other materials originally submitted as Postal Service library references) would be allowed. Allowing such additional questioning will assure that due process is accorded to NDMS, and will impose a minimal burden on the Postal Service. To the extent that NDMS questions are proper, the Postal Service is to provide answers. Presiding Officer's Ruling R97-1/71 scheduled witness Crum to appear on December 4 to respond to oral questions. If witness Crum is unable to provide written answers in advance of the December 4 hearing, he may respond to pending questions orally at that time.

On review of the specific Postal Service objections I find that questions NDMS/USPS-T28-28(c) & (j), and NDMS/USPS-T28-30 concern rate design issues beyond the scope of Crum Exhibit K and need not be answered. The Service claims that NDMS/USPS-T28-28(g), 31(b), 31(d)(iv), 31(f)(iv), 33(b)(iv) and 34(f) have already been asked and answered, but no citations to the answers have been provided. The Service should provide answers identifying the earlier response. Interrogatories USPS-T28-39 and 40 are characterized as asking for witness Crum's opinion about an analysis developed by NDMS using data from Exhibit K. Such questions are not improper, especially as witness Crum will have had an adequate opportunity to review

¹ The Postal Service indicates Advertising Mail Marketing Association has agreed to a similar suggestion. Response at 5.

the calculations provided. To the extent questions are unclear, clarification should be sought from NDMS counsel.

RULING

The Postal Service should respond, in writing if possible, or orally during hearings, to NDMS/USPS-T28-27; 28(a), (b), (d)-(i),(k); 29; and 31-41.

A handwritten signature in black ink, appearing to read 'Edward J. Gleiman', written in a cursive style.

Edward J. Gleiman
Presiding Officer